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REPORT
101-288

IMMIGRATION NURSING RELIEF ACT OF 1989

OCTOBER 16, 1989.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BROOKS, from the Committee on the Judiciary, submitted the following

REPORT

[To accompany H.R. 3259]

[Including cost estimate of the Congressional Budget Office]

The Committee on the Judiciary, to whom was referred the bill (H.R. 3259) to amend the Immigration and Nationality Act to provide for adjustment of status, without regard to numerical limitations, for certain H-1 nonimmigrant nurses and to establish conditions for the admission, during a 5-year period, of nurses as temporary workers, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE OF BILL

The purpose of H.R. 3259 is to assist in alleviating the national shortage of registered nurses by allowing for the adjustment of status of certain nonimmigrant registered nurses currently in the United States and by establishing conditions for the admission of foreign registered nurses during a 5-year period.

HISTORY

On March 20, 1989, Congressman Charles Schumer introduced H.R. 1507. That legislation was similar to legislation that was introduced by Congressman Schumer in the 100th Congress, H.R. 5329, which the Subcommittee on Immigration, Refugees, and International Law unanimously reported to the Full Committee. No further action on the measure was taken during the 100th Congress.

On October 5, 1988, the House passed H.R. 5115, which included a provision that provided for the extension of H-1 visas for regis-

H523-22.

tered nurses whose visas were to expire in 1988 or 1989. The extension was also available for registered nurses whose legal status expired in 1987 and had filed appeals prior to the date of enactment of the bill. H.R. 5115 was passed by the Senate on October 21, 1988 and enacted into law on November 15, 1988 (Public Law 100–658).

On May 31, 1989, the Subcommittee held a hearing on H.R. 1507 and on September 7, 1989 reported it to the Full Committee by voice vote in the form of a clean bill. The clean bill, H.R. 3259, was introduced by Congressmen Schumer, Morrison, Frank, and Mazzoli on September 13, 1989.

COMMITTEE VOTE

The Full Committee on the Judiciary marked up H.R. 3259 on October 3, 1989. By voice vote, the Committee ordered H.R. 3259 favorably reported to the House.

NEED FOR LEGISLATION

The need for this legislation arises from the shortage of registered nurses in the United States. According to the Secretary's Commission on Nursing, established in 1987 by Health and Human Services Secretary Otis R. Bowen, the reported shortage of nurses in hospitals and nursing homes alone is over 137,000. During a hearing on May 31, 1989, Dr. Lillian K. Gibbons, Executive Director of the Commission on Nursing stated "RN vacancy rates have more than tripled between 1983 and 1987, and 76 percent of all hospitals report at least some degree of shortage" (U.S. Congress. House. Committee on the Judiciary. Subcommittee on Immigration, Refugees and International Law. Immigration Nursing Relief Act of 1989. Hearing, 101st Cong., May 31, 1989, on H.R. 1507 and H.R. 2111. Washington, U.S. Govt. Print. Off., Ser. No. 13, p. 89). These shortages have forced some hospitals, both urban and rural, to close beds and occasionally entire wings.

H.R. 3259 addresses this problem by allowing nonimmigrant registered nurses in the United States to become lawful permanent residents. James Puleo, Assistant Commissioner, Adjudications and Nationality, Immigration and Naturalization Service, stated in his testimony that "approximately 75 percent of foreign nurses in the United States are from the Philippines, where the wait for a preference number may exceed 10 years under the third and sixth preferences." (Id., p. 37). Accordingly, absent this legislation, these desperately needed health care professionals will be prohibited from becoming a permanent part of the workforce until the crisis has gotten much worse.

This legislation would allow certain H–1 nurses currently in the United States and in a legal status to adjust to permanent resident status. Many of the nurses affected by this legislation work in critical care and emergency service units and their leaving would have a profound effect on the quality of health care delivered to critically ill patients. The Immigration and Naturalization Service (INS) in 1988 demonstrated its concern for the nursing shortage by allowing any foreign nurse who was in the United States on an H–1 visa and whose visa expired or would expire in 1988, to be granted an additional year (i.e., a sixth year) in the United States. According

to INS, 214 nurses were granted the sixth year. A further extension, allowing nurses an additional year (until December 31, 1989) was included in Public Law 100-658 which was enacted on November 15, 1988. As of March 1989, 392 nurses had benefited from that law. While these measures provided short term relief, it is obvious that broader, longer term legislation is needed.

H.R. 3259 also creates a new admission program (H-1a) for foreign registered nurses. Hospitals and health care facilities will be required to file an attestation with the Department of Labor to ensure that they have met certain obligations to retain and recruit American or permanent resident nurses.

H.R. 3259 also orders the Attorney General to cancel the H-1 regulations promulgated by the Department of Justice on August 8, 1986. The bill further prohibits the Attorney General from issuing any new H-1 regulations until 1992. The proposed regulations address the two areas for qualifying for an H-1: professions and prominence in a field. They define who is a professional and add two categories of "prominence" relating to arts and business. The proposed H visa changes, twice blocked by Congress, will be considered by the Subcommittee during legal immigration hearings already in progress.

Support for this legislation has been widespread and includes the AFL-CIO, American Federation of State, County and Municipal Employees (AFSCME), Local 1199, Retail, Wholesale & Department Store Union (RWDSU) New York, Hospital Association of New York, American Nurses Association, American Immigration Lawyers Association, Dallas-Fort Worth Hospital Council, Filipino Nurses Association of America, Beth Israel Medical Center New York, Filipino Nurses Organization, New Jersey Hospital Council, and the School of Nursing at the University of Texas.

Analysis of Major Provisions of Legislation

I. ADJUSTMENT OF STATUS FOR H-1 NONIMMIGRANT NURSES

As indicated previously, the shortage of registered nurses is widely acknowledged. In order to avoid disruption of health care services across the nation the bill provides that registered nurses legally in the United States as of September 1, 1989 may adjust status to permanent residence.

The Committee notes that many nurses entering the United States have available to them the ability to obtain permanent residence on the basis of a third preference petition as members of the professions. Nurses from the Philippines, however, are unable to adjust status because of the lengthy visa backlogs in that country. In order to accommodate this demand for visas the bill waives the numerical limitations for H-1 nurses seeking adjustment, thus placing nurses from all countries on the track toward permanent residence. According to the Immigration and Naturalization Service (INS), approximately 16,000 foreign nurses may benefit from the proposal. The bill provides that the spouse and children of the beneficiaries also are eligible for visas. The employer is still required to file a petition, and an application for adjustment of status based on that petition must be pursued by the nurse.

The nurse must have been employed in nursing for three years prior to applying for benefits under the bill. The Committee notes that there is every indication that nurses are committed to health care responsibilities and remain in their occupation for the long term. Yet, because some nurses may have entered the country more recently than others, the Committee believes that a three year commitment prior to achieving permanent residence is not an unrealistic expectation. The Committee notes that the employment need not be with the same employer. The standards for meeting third preference criteria remain the same as under current law, that is, the ability to meet schedule A (list of shortage occupation published by the Department of Labor) where nurses are pre-certified within the Department of Labor guidelines. Additionally, the nurse is required to meet appropriate licensure standards.

A transition period is provided for those nurses whose stay expires December 31, 1989, the majority of whom were beneficiaries of Public Law 100-658 (November 15, 1988). The bill allows these nurses to be considered in "legal status" for 120 days after the promulgation of regulations by INS. This will allow these nurses a sufficient period of time to pursue relief. In view of the September 1 cut-off date, those nurses who had adjudications under Public Law 100-658 pending on that date should be given every opportunity to avail themselves of relief. With respect to administration of this provision, the Committee believes that because of backlogs in some regional adjudications centers and district offices, INS should consider "one-step" processing of the petition and adjustment of status at the district office or regional facility in order to assure the most expeditious turn around. The Committee also urges hospitals and other facilities to assist nurses in working with INS by providing adequate documentation of petitions and qualifications.

Those nurses who are eligible to pursue permanent residence under existing channels are not subject to the three-year requirement unless they choose to avail themselves of status under the legislation.

II. FIVE-YEAR PILOT PROGRAM ADMISSION OF H-1A NURSES

The legislation balances the generous provisions for permanent residence to nurses already in the United States with stricter procedures for future admissions. The bill provides that future admissions of H-1 registered nurses will be designated H-1a and subject to new labor safeguards and new responsibilities on hospitals seeking H-1a nurses. The licensing requirements in the bill, however, remain similar to those under existing law and regulations (8 CFR 214). The five-year pilot program will provide a model mechanism for the admission of aliens in shortage occupations. The Committee will carefully scrutinize the effect of their admission on wages and working conditions of U.S. nurses.

(1) *Attestation.*—An attestation of need based on certain criteria is the foundation upon which an H-1a nurse will be admitted under the bill. For the first time employer's must attest to conditions prior to seeking a foreign nurse. The bill provides that the attestation shall be filed with the Department of Labor and the approval of a petition by the Attorney General is based on that docu-

ment on file. The Committee notes this is a streamlined process and does not anticipate lengthy review of the documentation prior to the Secretary of Labor's approval. In fact, the very nature of the penalty structure (discussed below) contemplates maximum flexibility for the admission of aliens under the pilot program and severe penalties for those who fail to meet the terms of the attestation.

The attestation serves two purposes: First, it places a responsibility on the facility to take certain steps in recruiting and retaining U.S. nurses. Second, it allows the shortage to be addressed during an interim period until a comprehensive approach can be devised. There are six criteria which must be attested to. First, the facility must attest that substantial disruption would occur without the services of a foreign nurse, or nurses in the event the petition includes more than one nurse. The Committee notes that evidence of substantial disruption may take many forms including, but not limited to, the health service needs of the community and the effect of limited services without the alien nurse in a particular function, or the effect on a program as a whole without the foreign nurse or nurses. While substantial disruption may be difficult to document, the Committee does not intend for this to be an insurmountable task. For instance, this condition may be satisfied by an employer when, despite good faith efforts, it was unable to address its hiring needs through recruitment of domestic labor. The bill provides that a facility cannot claim substantial disruption after having laid off nurses during that year. Second, the employment of a foreign nurse cannot adversely affect wages and working conditions of nurses similarly employed. Third, the facility must pay the prevailing wage at the facility. In this case the Committee notes that facilities are expected to consult local labor market statistics and employment offices for assistance. During hearings, David O. Williams, Deputy Assistant Secretary for Employment and Training, Department of Labor, noted that changes relating to immigration of nurses should "continue to ensure that there is a protection of wages and working conditions" (Hearings, p. 69). Fourth, the facility must demonstrate it is either taking significant steps to recruit and retain U.S. or immigrant nurses, or is subject to an approved state plan, outlined below, which includes these steps as well as possible new programs. The steps outlined in the bill and described below are samples of activities which would indicate efforts to reduce reliance on foreign nurses. Among those are operating or providing access to a training program, providing career advancement, paying wages above the prevailing wage, and providing nurses with adequate support services and salary advancement. Fifth, the facility must attest that there is not a strike or lockout in the course of a labor dispute, and the employment is not intended to influence an election for a bargaining representative. Sixth, the facility is required to provide notice of the filing of an attestation to various labor representatives or to post a notice in a conspicuous location. The Committee believes that notice of filing is an important element of the new procedure, particularly in view of the fact that this is one of two mechanisms available for U.S. nurses to monitor the admission of foreign nurses and its possible effect on their employment situation. The second notice mandated in the bill relates to a posting in Washington, D.C. of petitions

filed, and documentation available, for public access. The Committee expects both notices to be provided in a timely fashion so that aggrieved parties or the Department of Labor can take appropriate action if terms of the attestation have not been adhered to. The Department of Labor is expected to outline specific procedures and guidelines for timeliness in both cases. The Committee believes it is important that INS and the Department of Labor exchange information in a prompt fashion so that the list identifying facilities, which must be compiled by the Secretary, contains up to date and accurate information.

(2) *Significant steps.*—The hospitals must take a minimum of two steps to reduce reliance on foreign nurses, and the bill provides a listing of five suggested steps. This list is not exclusive in nature. The Committee encourages the facilities to be innovative in developing approaches to attracting U.S. nurses to existing positions or providing career development of nurses already on staff. Further examples could include in-house educational instruction during nonpeak periods, incentives for nurses through boneses and merit plans, and assistance in administrative duties or menial tasks which encumber direct patient-care.

(3) *State plan.*—The nursing crisis is a microcosm of many occupations undergoing change through demographics and changing work environments. The bill provides for a transition period for the admission of nurses whicle facilities and the nation address the boarder underlying causes of the crisis. States have a role to play in providing programs and coordinating the resources of education and training with employment for nurses as well as other occupations. The Committee believes that the state is the logical provider of employment information and networks which enable it to facilitate the link between nurses and available employment and advancement opportunities. The State Plan is an umbrella under which all these activities can be coordinated. The facilities and the state should work together in solving the health care problem.

The relationship of the facilities to the State Plan is expected to be that of needs assessment, program management and facilitation. The lack of coordination among facilities and educational institutions and training programs may be one of the reasons U.S. nurses are in short supply and may explain the desperation with which foreign nurses are sought. The State Plan is the vehicle which can promote the interaction of these entities and provide broader and more regionally based approaches.

Among the responsibilities mandated under a State Plan are steps outlined previously for the recruitment and retention of workers; that is, operating training programs, career ladders for others to become registered nurses, paying wages above prevailing wage and relief from administrative services. But the state has an obligation to devote resources which hospitals are lacking. The state can enlist the cooperation of high schools and colleges in counseling for the nursing profession. Training programs and grants for men and women to pursue a myriad of health care opportunities can be established. Geographic and salary data can be made available to assist in linking nurses to facilities in need. Publication of vacancies and programs can be made in industry and state newsletters. Training and videos as well as information on

housing and services for relocation to hospitals for employment also merit consideration.

The Committee notes that many health professionals would likely become registered nurses but for the limited amount of time for study, inflexible hours, and difficult working conditions. There is little inventive to aspire to career advancement. Many facilities have compounded this dilemma by their laxness in responding to these problems and instead resorting to hiring foreign nurses. The State Plan, with the cooperation of facilities, may be able to reach this health professional population. The State may set up home-study programs with hospitals, arrange for reciprocal training, and establish programs with the State licensing boards to allow work-credits for purposes of meeting educational or state clinical requirements. The State and facilities may also enter into cooperative agreements for providing health care insurance and other job-related elements which would allow greater flexibility for those attempting to combine careers with school. Monetary grants or long term loans can also beckon some nurses toward career advancement opportunities.

Another population which may be drawn on for re-employment are those nurses who have left the profession for childrearing and other reasons. The State may encourage their employment through child care on the premises, holiday schedule adjustments and substantial salary increases. The Committee notes that most nurses do not choose willingly to leave the profession, but do so because of intolerable working conditions, low salaries and lack of suitable recognition in the field. The States are encouraged to work with the Department of Labor in establishing a mechanism which profiles those hospitals offering special programs suited to the needs of some of these populations.

The State may also place demands on the facilities for comprehensive plans to reduce reliance on foreign nurses and coordinate efforts with the Department of Labor in recommendations for phasing down such reliance.

(4) *Advisory board.*—The bill establishes an advisory group consisting of the Secretaries of Labor and Health and Human Services, the Attorney General, hospitals, and labor organizations to review the impact of the H-la program and the formulation of State recruitment and retention plans. The Committee expects the gourp to encompass a wide range of facilities and may include organizations associated with determining qualifications of nurses as well as any other groups whose input would assist in its task.

(5) *Enforcement.*—To balance the new procedures, enforcement mechanisms are imposed which would curtail further use of an attestation when violations of conditions occur. Investigations may be initiated in two instances: (1) through the Secretary of Labor when there is reasonable cause to believe a facility fails to meet conditions of the attestation, and (2) upon the filing of a complaint by an aggrieved party. The Committee expects that the term "associations" for this purpose includes nursing groups, labor organizations, and others determined by regulation of the Secretary of Labor. On the other hand, an individual need not belong to an organization to be an aggrieved party. The bill requires the Secretary of Labor to establish a process for receipt for investigation of com-

plaints. The Committee expects such procedures will be established through regulation and will include an outline of material which must be included in the complaint to trigger an investigation, procedures within the Department of Labor relating to the investigation, hearing procedures and types of evidentiary material which may submitted. The bill requires the Secretary of Labor to provide a determination within 120 days of the filing of a complaint and a hearing within 60 days of that determination. In addition to a mandatory one year prohibition on petition approvals by the Attorney General, the Secretary of Labor may impose administrative or civil monetary penalties for failure to comply with the terms of the attestation. In the case of violation of the prevailing wage the Secretary of Labor is required to order the facility to provide back pay. The alien nurse who entered under the attestation is not subject to these penalties or deportation because of the prospective nature of the penalties.

III. PROHIBITION ON REGULATIONS

The bill prohibits the promulgation of regulations regarding H-1 visas by the Attorney General until October 1, 1992. This provision addresses a vexing problem relating to the largescale admission of H-1 aliens without regard to U.S. labor impact. As defined under, H-1 relates to aliens of "distinguised merit and ability." This term has been interpreted to mean any alien seeking to enter the U.S. with a college degree. This interpretation, coupled with absolutely no labor safeguards, provides for the entry of large numbers of aliens in occupations which may have an adverse impact on the employment of U.S. workers. On August 8, 1986 and October 26, 1988 (51 F.R. 28576; 53 F.R. 43217) INS promulgated regulations upholding this interpretation. The Committee believes the continued entry of H-1's who do not appear to be of "distinguished merit and ability" contravenes Congressional intent and for that reason Congress prohibited the implementation of those regulations in two succeeding Congresses (Public Law 100-202, December 22, 1987). During hearings on the instant legislation INS agreed that the entry of H-1's without proper labor safeguards was inappropriate. According to James Puleo Assistant Commissioner, Adjudications and Nationality, INS, "Petitions for temporary workers in all entry-level professional fields should be subject to a labor market test, just as Congress proposes for nurses. We don't want the nursing crisis of today to be the engineering or teaching crisis of tomorrow" (Hearings, p. 73).

The Committee does not take this action lightly. Enactment of changes to the system of legal immigration are anticipated this Congress. On September 27, 1988 the Subcommittee held one day of hearings on S. 358, H.R. 672, H.R. 2448 and H.R. 2646; and further hearings are scheduled. It would be premature to initiate rulemaking on H-1 visas at a time when statutory changes are being contemplated.

JURISDICTIONAL CONCERNS OF COMMITTEE ON EDUCATION AND LABOR

The Chairman of the Committee on Education and Labor, the Honorable Augustus F. Hawkins, has written to the Committee on

the Judiciary regarding the former Committee's jurisdictional concerns relating to H.R. 3259. That letter follows:

COMMITTEE ON EDUCATION AND LABOR,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, October 13, 1989.

Hon. JACK BROOKS,
Chairman, Committee on the Judiciary, Washington, DC.

DEAR MR. CHAIRMAN: As Chairman of the Committee on Education and Labor, I wish to thank you for your kind consideration of our jurisdictional concerns relating to H.R. 3259, the Immigration Nursing Relief Act of 1989.

The Committee on Education and Labor, under Rule X, cl. 1 (g)(8), has jurisdiction over the regulation or prevention of importation of foreign laborers under contract, and has exercised its claim where the Secretary of Labor has authority or responsibility for regulating and/or enforcing the conditions or requirements needed prior to the formal admissions process. Those labor requirements generally include a guarantee that there be no adverse affect or impact on the wages and working conditions of domestic workers who are similarly situated, that the wages offered be at the prevailing or the adverse affect wage rate, positive recruitment, limitations on entrance during a strike or lockout and some form of labor certification or attestation.

Mr. Chairman, H.R. 3259 not only deals with the regulation of foreign laborers and includes these labor protections, but also mandates that the Secretary of Labor establish an administrative hearing process for consideration of any violation of these provisions. This bill therefore, falls squarely within the jurisdiction of the Committee on Education and Labor. Recognizing that consideration of this measure is under some time pressure and because the Committee on the Judiciary has made every effort to accommodate the interests and views of the Committee on Education and Labor, of which I am very appreciative and has acknowledged our jurisdictional claim, we will not exercise our jurisdictional prerogatives.

Again, Mr. Chairman, I very much appreciate your kind consideration in this matter and your willingness to acknowledge our claim by inclusion of this letter in your committee report to accompany H.R. 3259.

With best wishes,

Sincerely yours,

AUGUSTUS F. HAWKINS, *Chairman.*

SECTION-BY-SECTION

SECTION 1 SHORT TITLE

Immigration Nursing Relief Act of 1989.

SECTION 2 ADJUSTMENT OF STATUS FOR CERTAIN H–1 NONIMMIGRANT NURSES

(a) Provides adjustment of status without regard to numerical limitations for H–1 registered nurses who entered the U.S. prior to September 1, 1989, have been employed in that capacity 3 years

before submission of an application, and who are employed as a registered nurse on the date of enactment. Requires the nurse meet labor certification standards. Provides that the Attorney General issue regulations on this subsection within 90 days of enactment.

(b) Allows a transition period of 7 months for nurses whose H-1 status expires December 31, 1989 to be considered in lawful status for purposes of adjustment.

SECTION 3 PROSPECTIVE ADMISSION OF NONIMMIGRANT NURSES FOR 5 YEAR PERIOD

(a) Establishes H-1a pilot program for admission of nurses on the basis of an attestation certified by the Department of Labor to the Attorney General.

(b)(1) *Nurse qualifications.*—Requires nurses be licensed, pass appropriate exams relating to admission to the U.S., and be qualified to practice in the place of intended employment.

(2)(A) *Facility attestation.*—Requires facility attest.

(i) Substantial disruption would occur without the alien nurses.

(ii) Employment would not adversely affect wages and working conditions of nurses similarly employed.

(iii) The alien will be paid the prevailing wage for registered nurses similarly employed by the facility.

(iv) Either (I) The facility has taken timely and significant steps to recruit and retain registered nurses who are U.S. citizens or immigrants, or (II) The facility is subject to an approved State plan for the recruitment and retention of nurses.

(v) There is no strike or lockout in the course of a labor dispute.

(vi) Notice of filing has been provided by the facility to the bargaining representative of registered nurses or when no representative posting in conspicuous locations.

(B) *Significant steps to recruit and retain nurses.*—Sets forth the following steps of which any one may be considered significant for purposes of (A)(iv)(I):

(i) Operating a training program for registered nurses at the facility or financing a training program elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying nurses at wages above the prevailing wage in the geographic area.

(iv) Providing adequate support service to free nurses from administrative duties.

(v) Provide reasonable opportunities for meaningful salary advancement.

(C) *Validity of attestation.*—Valid for one year.

(D) *Petitions filed on basis of attestation.*—Allows numerous petitions filed on the basis of one attestation.

(E) *Penalties.*

(i) Requires the Secretary of Labor post a list in Washington, D.C. of petitions filed and accessibility of attestation.

(ii) Requires the Secretary of Labor establish a process for the receipt, investigation, and disposition of complaints concerning a facility which does not meet conditions attested to or misrepresents material facts. Provides that any aggrieved person or organization

including a bargaining representative or other association may file a complaint. Allows the Department of Labor to initiate an investigation of an attestation when there is reasonable cause to believe there is a failure to meet conditions which have been the subject of an attestation.

(iii) Requires the Secretary of Labor make a determination within 120 days of a complaint. Requires a hearing on the complaint within 60 days of a determination.

(iv) Allows Secretary of Labor after notice and opportunity for hearing to impose civil monetary penalties for violation of the attestation conditions. Prohibits the Attorney General approving petitions for one year after the Secretary of Labor certifies the facility has not met the conditions.

(v) Requires Secretary of Labor after notice and opportunity for hearing to order the facility to provide for payment of back pay for violations of prevailing wage conditions.

(3) *State Plan.*—Provides that the Secretary of Labor establish a process under which a State submits a program for the recruitment and retention of registered nurses in the facilities in the State which incorporates similar steps outlined under (2)(A)(iv)(I) as well as other educational programs. Requires approval or disapproval based on consultation with the Secretary of Health and Human Services.

(4) *Admission period.*—Provides for an admission period of 3 years subject to extensions up to 5 years. An additional sixth year may be obtained in extraordinary circumstances.

(c) *Implementation.*

(1) Requires the Secretary of Labor in consultation with the Department of Health and Human Services publish regulations not later than 8 months after enactment.

(2) Provides for the appointment of an advisory group including representative of the Secretary of Labor, Health and Human Services, the Attorney General, hospitals, and labor organizations representing registered nurses to advise on the impact of the H-1a program, recruitment and retention of registered nurses, State plan requirements, and advisability of extending the 5-year program.

(d) *Filing of Petitions.*—Provides that H-1a petitions can be filed 9 months after enactment.

(e) *Prohibition on H-1 Regulations.*—Requires the Attorney General cancel rulemaking on H-1 regulations which were commenced August 8, 1986 and prohibits any proposed or final rules in that area before October 1, 1992.

OVERSIGHT STATEMENT

Pursuant to clause 2(l)(3)(A) or rule XI of the Rules of the House of Representatives, the Committee states that it has exercised, and will continue to exercise, close oversight with regard to the administration of the Immigration and Nationality Act in general and nonimmigrant visa laws in particular.

Clause 2(l)(3)(A) of rule XI of the Rules of the House of Representatives is inapplicable since no oversight findings and recom-

mendations have been received from the Committee on Government Operations.

Inflationary Impact Statement

Pursuant to clause 2(l)(4) of rule XI of the Rules of the House of Representatives, the Committee estimates that this bill will not have an inflationary effect on prices and costs in the operations of the national economy.

Estimate of Cost

Pursuant to clause 7, rule XIII of the Rules of the House of Representatives, the Committee concurs with the cost estimates set forth below by the Congressional Budget Office.

Budgetary Information

Clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives is inapplicable because the instant legislation does not provide new budget authority. Pursuant to Clause 2(l)(3)(C) of rule XI, the following estimate was prepared by the Congressional Budget Office and submitted to the Committee:

U.S. Congress,
Congressional Budget Office,
Washington, DC, October 10, 1989.

Hon. Jack Brooks,
Chairman, Committee on the Judiciary, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 3259, the Immigration Nursing Relief Act of 1989, as ordered reported by House Committee on the Judiciary, October 3, 1989.

Based on information provided by the Department of Labor and the Immigration and Naturalization Service (INS), CBO estimates that enacting this bill would result in a cost of about $300,000 annually to the federal government. The costs would be associated with a pilot program administered by the Department of Labor that gives special immigration status to foreign nurses. The bill would not create a net increase in spending for the INS because any increased activity would be funded through fees collected with the applications for residency.

No costs would be incurred by state or local governments as a result of enactment of this bill.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contacts are Michael Sieverts and Corey Leach, who can be reached at 226–2860.

Sincerely,

Robert D. Reischauer, *Director.*

Changes in Existing Law Made by the Bill, as Reported

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omit-

ted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

IMMIGRATION AND NATIONALITY ACT

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TITLE I—GENERAL

DEFINITIONS

SECTION 101. (a) As used in this Act—

(1) * * *

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(15) The term "immigrant" means every alien except an alien who is within one of the following classes of nonimmigrant aliens—

(A) * * *

* * * * * * *

(H) an alien having a residence in a foreign country which he has no intention of abandoning (i) *(a) who is coming temporarily to the United States to perform services as a registered nurse, who meets the qualifications described in section 212(m)(1), and with respect to whom the Secretary of Labor determines and certifies to the Attorney General that an unexpired attestation is on file and in effect under section 212(m)(2) for the facility for which the alien will perform the services, or (b)* who is of distinguished merit and ability and who is coming temporarily to the United States to perform services *(other than services as a registered nurse)* of an exceptional nature requiring such merit and ability, and who, in the case of a graduate of a medical school coming to the United States to perform services as a member of the medical profession, is coming pursuant to an invitation from a public or nonprofit private educational or research institution or agency in the United States to teach or conduct research, or both, at or for such institution or agency; or (ii) who is coming temporarily to the United States (a) to perform agricultural labor or services, as defined by the Secretary of Labor in regulations and including agricultural labor defined in section 3121(g) of the Internal Revenue Code of 1954 and agriculture as defined in section 3(f) of the Fair Labor Standards Act of 1938 (29 U.S.C. 203(f)), of a temporary or seasonal nature, or (b) to perform other temporary service or labor if unemployed persons capable of performing such service or labor cannot be found in this country, but this clause shall not apply to graduates of medical schools coming to the United States to perform services as members of the medical profession; or (iii) who is coming temporarily to the United States as a trainee, other than to receive graduate medical education or training; and the alien spouse and minor children of any such alien specified in this paragraph if accompanying him or following to join him;

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TITLE II—IMMIGRATION

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CHAPTER 2—QUALIFICATIONS FOR ADMISSION OF ALIENS; TRAVEL CONTROL OF CITIZENS AND ALIENS

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GENERAL CLASSES OF ALIENS INELIGIBLE TO RECEIVE VISAS AND EXCLUDED FROM ADMISSION; WAIVERS OF INADMISSIBILITY

SEC. 212. (a) * * *

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(m)(1) The qualifications referred to in section 101(a)(15)(H)(i)(a), with respect to an alien who is coming to the United States to perform nursing services for a facility, are that the alien—

(A) has obtained a full and unrestricted license to practice professional nursing in the country where the alien obtained nursing education or has received nursing education in the United States or Canada;

(B) has passed an appropriate examination (recognized in regulations promulgated in consultation with the Secretary of Health and Human Services) or has a full and unrestricted license under State law to practice professional nursing in the State of intended employment; and

(C) is fully qualified and eligible under the laws (including such temporary or interim licensing requirements which authorize the nurse to be employed) governing the place of intended employment to engage in the practice of professional nursing as a registered nurse immediately upon admission to the United States and is authorized under such laws to be employed by the facility.

(2)(A) The attestation referred to in section 101(a)(15)(H)(i)(a), with respect to a facility for which an alien will perform services, is an attestation as to the following:

(i) There would be a substantial disruption through no fault of the facility in the delivery of health care services of the facility without the services of such an alien.

(ii) The employment of the alien will not adversely affect the wages and working conditions of registered nurses similarly employed,

(iii) The alien will be paid at the prevailing wage rate for registered nurses similarly employed by the facility.

(iv) Either (I) the facility has taken and is taking timely and significant steps designed to recruit and retain sufficient registered nurses who are United States citizens or immigrants who are authorized to perform nursing services, in order to remove as quickly as reasonably possible the dependence of the facility on nonimmigrant registered nurses, or (II) the facility is subject to an approved State plan for the recruitment and retention of nurses (described in paragraph (3)).

(v) There is not a strike or lockout in the course of a labor dispute, and the employment of such an alien is not intended or

designed to influence an election for a bargaining representative for registered nurses of the facility.

(vi) At the time of the filing of the petition for registered nurses under section 101(a)(15)(H)(i)(a), notice of the filing has been provided by the facility to the bargaining representative of the registered nurses at the facility or, where there is no such bargaining representative, notice of the filing has been provided to registered nurses employed at the facility through posting in conspicuous locations.

A facility is considered not to meet clause (i) (relating to an attestation of a substantial disruption in delivery of health care services) if the facility, within the previous year, laid off registered nurses. Nothing in clause (iv) shall be construed as requiring a facility to have taken significant steps described in such clause before the date of the enactment of this subsection.

(B) For purposes of subparagraph (A)(iv)(I), each of the following shall be considered a significant step reasonably designed to recruit and retain registered nurses:

(i) Operating a training program for registered nurses at the facility or financing (or providing participation in) a training program for registered nurses elsewhere.

(ii) Providing career development programs and other methods of facilitating health care workers to become registered nurses.

(iii) Paying registered nurses at wages at a rate above the prevailing wage rate for registered nurses in the geographic area.

(iv) Providing adequate support services to free registered nurses from administrative and other nonnursing duties.

(v) Providing reasonable opportunities for meaningful salary advancement by registered nurses.

The steps described in this subparagraph shall not be considered to be an exclusive list of the significant steps that may be taken to meet the conditions of subparagraph (A)(iv)(I).

(C) Subject to subparagraph (E), an attestation under subparagraph (A) shall—

(i) expire at the end of the 1-year period beginning on the date of its filing with the Secretary of Labor, and

(ii) apply to petitions filed during such 1-year period if the facility states in each such petition that it continues to comply with the conditions in the attestation.

(D) A facility may meet the requirements under this paragraph with respect to more than one registered nurse in a single petition.

(E)(i) The Secretary of Labor shall compile and make available for public examination in a timely manner in Washington, D.C., a list identifying facilities which have filed petitions for nonimmigrants under section 101(a)(15)(H)(i)(a) and, for each such facility, a copy of the facility's attestation under subparagraph (A) (and accompanying documentation) and each such petition filed by the facility.

(ii) The Secretary of Labor shall establish a process for the receipt, investigation, and disposition of complaints respecting a facility's failure to meet conditions attested to or a facility's misrepresentation of a material fact in an attestation. Complaints may be filed by any aggrieved person or organization (including bargaining repre-

sentatives, associations deemed appropriate by the Secretary, and other aggrieved parties as determined under regulations of the Secretary). The Secretary shall conduct an investigation under this clause if there is reasonable cause to believe that a facility fails to meet conditions attested to.

(iii) Under such process, the Secretary shall provide, within 120 days after the date such a complaint is filed, for a determination as to whether or not a basis exists to make a finding described in clause (iv). If the Secretary determines that such a basis exists, the Secretary shall provide for notice of such determination to the interested parties and an opportunity for a hearing on the complaint within 60 days of the date of the determination.

(iv) If the Secretary of Labor finds, after notice and opportunity for a hearing, that a facility (for which an attestation is made) has failed to meet a condition attested to or that there was a misrepresentation of material fact in the attestation, the Secretary shall notify the Attorney General of such finding and may, in addition, impose such other administrative remedies (including civil monetary penalties) as the Secretary determines to be appropriate. Upon receipt of such notice, the Attorney General shall not approve petitions filed with respect to a facility during a period of least 1 year for nurses to be employed by the facility.

(v) In addition to the sanctions provided under clause (iv), if the Secretary of Labor finds, after notice and an opportunity for a hearing, that a facility has violated the condition attested to under subparagraph (A)(iii) (relating to payment of registered nurses at the prevailing wage rate), the Secretary shall order the facility to provide for payment of such additional amounts of back pay as may be required to comply with such condition.

(3) The Secretay of Labor shall provide for a process under which a State may submit to the Secretary a plan for the recruitment and retention of United States citizens and immigrants who are authorized to perform nursing services as registered nurses in facilities in the State. Such a plan may include counseling and educating health workers and other individual concerning the employment opportunities available to registered nurses. The Secretary shall provide, on an annual basis in consultation with the Secretary of Health and Human Services, for the approval or disapproval of such a plan, for purposes of paragraph (2)(A)(iv)(II). Such a plan may not be considered to be approved with respect to the facility unless the plan provides for the taking of significant steps described in paragraph (2)(A)(iv)(I) with respect to registered nurses in the facility.

(4) The period of admission of an alien under section 101(a)(15)(H)(i)(a) shall be for an initial period of not to exceed 3 years, subject to an extension for a period or periods, not to exceed a total period of admission of 5 years (or a total period of admission of 6 years in the case of extraordinary circumstances, as determined by the Attorney General).

(5) For purposes of this subsection and section 101(a)(15)(H)(i)(a), the term "facility" includes an employer who employs registered nurses in a home setting.

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